

## **IC 32-30-3**

### **Chapter 3. Ejectment and Quiet Title**

#### **IC 32-30-3-1**

##### **Action for ejectment or recovery of possession of real estate; plaintiff's affidavit**

Sec. 1. (a) This section applies to all actions:

- (1) in ejectment; or
- (2) for the recovery of possession of real estate.

(b) At the time of filing a complaint or at any time before judgment, a plaintiff may file with the clerk of the court in which the action is filed or pending an affidavit stating the following:

- (1) The plaintiff is entitled to possession of the property described in the complaint.
- (2) The defendant has unlawfully retained possession of the property described in the complaint.
- (3) The estimated value of the property described in the complaint.
- (4) The estimated rental value of the property described in the complaint.

*As added by P.L.2-2002, SEC.15.*

#### **IC 32-30-3-2**

##### **Order to appear; order to show cause; requirements**

Sec. 2. (a) Upon the filing of an affidavit described in section 1 of this chapter, the clerk shall issue an order for a time fixed by the judge directing the defendant to appear to controvert the affidavit or to show cause why the judge should not remove the defendant from the property and put the plaintiff in possession. The order to show cause must direct the time within which the order must be served on the defendant and set forth the date, time, and place for the hearing, which may take place no earlier than five (5) business days after the date of service on the defendant.

(b) The order to show cause must state the following:

- (1) The defendant may file supporting affidavits with the court.
- (2) The defendant may appear and present supporting testimony at the hearing on the order to show cause.
- (3) The defendant may file with the court a written undertaking to stay the delivery of the property under this chapter.
- (4) The judge may issue a judgment of possession in favor of the plaintiff if the defendant fails to appear at the hearing.

*As added by P.L.2-2002, SEC.15.*

#### **IC 32-30-3-3**

##### **Preliminary order for possession; required findings**

Sec. 3. After reviewing the complaint, affidavits, and other evidence or testimony, the court may issue an order for possession before the hearing if probable cause appears that:

- (1) the property is in immediate danger of destruction, serious harm, or sale to an innocent purchaser; or

- (2) the holder of the property threatens to destroy, harm, or sell the property to an innocent purchaser.

*As added by P.L.2-2002, SEC.15.*

#### **IC 32-30-3-4**

##### **Order for possession; expedited hearing; temporary restraining orders instead of order for possession**

Sec. 4. (a) If a court issues an order of possession under section 3 of this chapter, the defendant or other person from whom possession of the property has been taken may apply to the court for an order shortening the time for hearing on the order to show cause. The court may shorten the time for the hearing and direct that the matter be heard on at least forty-eight (48) hours notice to the plaintiff. An order of possession issued under section 3 of this chapter must direct the sheriff or other executing officer to hold the property until further order of the court.

(b) If a court does not issue an order of possession under section 3 of this chapter, the court may, in addition to issuing an order to show cause, issue temporary restraining orders against the defendant as needed to preserve the rights of the parties with respect to the property and the status of the property. The court shall issue the temporary restraining orders in accordance with the rules of the supreme court governing the issuance of injunctions.

*As added by P.L.2-2002, SEC.15.*

#### **IC 32-30-3-5**

##### **Hearing on order to show cause; court determinations; prejudgment orders; appointment of receiver**

Sec. 5. (a) After the hearing on the order to show cause, the court shall:

- (1) consider the pleadings, evidence, and testimony presented at the hearing; and
- (2) determine with reasonable probability which party is entitled to possession, use, and enjoyment of the property.

The court's determination is preliminary pending final adjudication of the claims of the parties. If the court determines that the action is an action in which a prejudgment order of possession in plaintiff favor should issue, the court shall issue the order.

(b) The court may issue the prejudgment order of possession in favor of the plaintiff if the defendant fails to appear at the hearing on the order to show cause.

(c) If the plaintiff's property has a peculiar value that cannot be compensated by damages, the court may appoint a receiver to take possession of and hold the property until further order of the court.

*As added by P.L.2-2002, SEC.15.*

#### **IC 32-30-3-6**

##### **Order of possession; prerequisites**

Sec. 6. A court may not issue an order of possession in favor of a plaintiff other than an order of final judgment until the plaintiff has filed with the court a written undertaking in an amount fixed by the

court and executed by a surety to be approved by the court binding the plaintiff to the defendant in an amount sufficient to assure the payment of any damages the defendant may suffer if the court wrongfully ordered possession of the property to the plaintiff.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-7**

#### **Order of possession; requirements**

Sec. 7. The court shall direct the order of possession to the sheriff or other officer charged with executing the order and within whose jurisdiction the property is located. The order of possession must:

- (1) describe the property;
- (2) direct the executing officer to:
  - (A) seize possession of the property unless the court issued the order without notice to the parties; and
  - (B) if the defendant has not filed a written undertaking as provided in section 8 of this chapter, put the plaintiff in possession of the property by removing the defendant and the defendant's personal property from the property;
- (3) have attached a copy of any written undertaking filed by the plaintiff under section 6 of this chapter; and
- (4) inform the defendant of the right to except to the surety upon the plaintiff's undertaking or to file a written undertaking for the repossession of the property as provided in section 8 of this chapter.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-8**

#### **Return of possession to defendant; period for return; required surety; notice; proof of service**

Sec. 8. (a) Before the hearing on the order to show cause or before final judgment, and within the time fixed in the order of possession, the defendant may require the return of possession of the property by filing with the court a written undertaking executed by a surety to be approved by the court stating that the defendant is bound in an amount determined by the court sufficient to assure the payment of costs assessed against the defendant for the wrongful detention of the property.

(b) If a defendant files an undertaking under this section, the defendant shall:

- (1) serve a notice of filing the undertaking on the executing officer and the plaintiff or the plaintiff's attorney; and
- (2) file with the court proof of service of the notice of filing the undertaking.

(c) If a defendant files an undertaking before the hearing on the order to show cause, the court shall terminate the hearing unless the plaintiff takes exception to the surety.

(d) If the property is in the possession of the executing officer when the defendant files the undertaking, the court shall return possession of the property to the defendant not more than five (5) days after service of notice of the filing of the undertaking on the plaintiff or the

plaintiff's attorney.  
*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-9**

#### **Order of possession; delivery; service**

Sec. 9. (a) If a defendant or the defendant's attorney is in open court when the court issues the order of possession, a copy of the order shall be delivered to the defendant and the delivery noted in the order book.

(b) If the defendant and the defendant's attorney are not present, sufficient copies of the order shall be delivered to the sheriff or other executing officer. The executing officer shall, without delay, serve upon the defendant a copy of the order of possession by delivering the order to the defendant personally or to the defendant's agent. If the executing officer cannot find the defendant or the defendant's agent, the executing officer shall leave the order at the defendant's usual place of abode or with some person of suitable age and discretion. If the defendant and the defendant's agent do not have any known usual place of abode, the executing officer shall mail the order to the defendant's last known address.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-10**

#### **Removal of occupants within 48 hours service**

Sec. 10. If the property is in the possession or control of the defendant or the defendant's agent, the executing officer shall take the property into custody and remove the occupants from the property not earlier than forty-eight (48) hours after the order of possession is served on the defendant or the defendant's agent.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-11**

#### **Executing officer's return of order of possession**

Sec. 11. The executing officer shall return the order of possession with the proceedings endorsed on the order to the court in which the action is pending not more than five (5) days after taking into custody the property described in the order.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-12**

#### **Final judgment supercedes prior orders**

Sec. 12. A final judgment supersedes any:

- (1) prejudgment order for possession;
- (2) temporary restraining order; or
- (3) order temporarily changing possession of property;

issued under this chapter.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-13**

#### **Actions in plaintiff's own name**

Sec. 13. Any person having a right to:

(1) recover the possession of; or  
(2) quiet title to;  
real estate in the name of any other person has a right to recover possession or quiet title in the person's own name. An action may not be defeated or reversed if the plaintiff could have successfully maintained the action in the name of another person to inure to the plaintiff's benefit.  
*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-14**

#### **Defendants in certain actions; plaintiff's complaint; plaintiff's affidavit; notice; venue**

Sec. 14. (a) This section applies to the following proceedings brought in a state court concerning real estate or any interest in real estate located in Indiana:

- (1) An action to:
  - (A) quiet or determine title to;
  - (B) obtain title or possession of; or
  - (C) partition;real estate.

- (2) An action by an executor or administrator to:
  - (A) sell real estate to satisfy the debts of a decedent; or
  - (B) enforce or foreclose a mortgage or lien on real estate.

(b) A person who institutes a proceeding described in subsection (a) may, under a circumstance set forth in subsection (c), name as a defendant any of the following individuals:

- (1) A person:
  - (A) who may have an interest in real estate that is the subject of the proceeding; and
  - (B) whose name appears of record in a record concerning the real estate.
- (2) A person who bears one of the following relationships to a former owner or encumbrancer of the real estate:
  - (A) Spouse.
  - (B) Widow or widower.
  - (C) Heir or devisee.

The person who institutes the proceeding does not have to know the name of a person described in subdivision (2).

(c) A person who institutes a proceeding described in subsection (a) may name an individual described in subsection (b) as a defendant if public records in the county in which the real estate that is the subject of the proceeding is located any of disclose the following circumstances:

- (1) There is a break or hiatus in the record title of real estate.
- (2) There exists:
  - (A) a defect in;
  - (B) an apparent defect in; or
  - (C) a cloud upon;the title of the real estate due to a defective or inaccurate legal description of the real estate.
- (3) There is no record that a grantor or mortgagor was unmarried

when the deed to or mortgage on the real estate was executed.

(4) An instrument affecting the real estate, including a deed, will, or mortgage, was not properly executed.

(5) A mortgage, vendor's lien, or other lien or encumbrance affecting the real estate was not properly released.

(6) The person instituting the proceeding does not know:

(A) the name of another person who may claim an interest in the real estate based on the other person's relationship to a former owner, mortgagee, or encumbrancer of the real estate; or

(B) whether another person, including a person described in clause (A), who may have an interest in the real estate is alive or dead.

(d) The plaintiff in a proceeding described in subsection (a) may state the following in the complaint:

(1) The plaintiff asserts title to the real estate that is the subject of the proceeding against all other persons.

(2) The purpose of the proceeding is to quiet the title to the real estate.

(3) The plaintiff has named as defendants all persons whom the party knows may have a claim to or interest in the real estate.

(e) The plaintiff shall file with the complaint an affidavit that states the following:

(1) The complaint contains the names of all persons disclosed by public record by or through whom a claim or interest in the real estate may be asserted.

(2) The plaintiff does not know the following information about a person described in subdivision (1):

(A) Whether the person is alive or dead.

(B) The person's legal residence.

(C) The person's marital status.

(D) If the person is or has been married, the name or address of the person's spouse, widow, or widower.

(E) If the person is dead, whether the person has left any heirs or devisees.

(F) The name or legal residence of an heir or devisee.

(3) The plaintiff claims full and complete right and title in the real estate that is the subject of the proceeding described in subsection (a).

(4) The plaintiff intends to quiet title to the real estate through the proceeding.

(f) After the plaintiff files the complaint and affidavit, the plaintiff shall file an affidavit for publication of notice under IC 34-32-1.

(g) After the plaintiff files the affidavit for publication of notice described in subsection (f), the clerk of the county in which the real estate that is the subject of the proceeding described in subsection (a) is located shall publish notice of the following:

(1) The filing and pendency of the proceeding.

(2) The date on which the proceeding will take place.

(3) Designations and descriptions of any defendant whose name and legal residence are unknown.

(4) A legal description of the real estate.

(5) The purpose of the proceeding, which is to quiet title to the real estate.

(h) After the clerk publishes notice as set forth in subsection (g), the clerk shall provide proof of the publication to the court in which the proceeding described in subsection (a) is pending. Not earlier than thirty (30) days after the last publication of notice, the court may hear and determine all matters in the proceeding as if the plaintiff had known and sued all possible claimants by their proper names. All decrees, orders, and judgments issued by the court are binding and conclusive on all parties and claimants. The proceeding shall be taken as a proceeding in rem against the real estate.

(i) If the real estate that is the subject of the proceeding described in subsection (a) is located in more than one (1) county, the plaintiff may file a complaint in a court located in any county in which the real estate is located. The plaintiff may not file a complaint in more than one (1) court. The plaintiff shall publish notice of the complaint in each county in which the real estate is located. The published notice in each county shall contain the following:

(1) The legal description of the real estate that is located in that county.

(2) The other counties in which the real estate is located.

(3) Notice that a certified copy of the final judgment in the proceeding will be filed, not more than three (3) months after the judgment is entered, in the recorder's office in each county in which the real estate is located.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-15**

#### **Statutory construction**

Sec. 15. Section 14 of this chapter may not be construed to contravene or repeal any other Indiana law concerning title to real estate or suits or actions affecting title to real estate. Section 14 of this chapter supplements laws existing on April 26, 1915.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-16**

#### **Action to quiet title; service**

Sec. 16. (a) In a suit to quiet title to real estate in a state court, the plaintiff shall serve:

(1) all resident and nonresident defendants whose residence is known; and

(2) all defendants whose residence is unknown.

(b) Service on a known defendant by:

(1) the defendant's individual name;

(2) the name by which the defendant appears of record;

(3) the name by which the defendant is commonly known; or

(4) the defendant's surname if the defendant's first name is unknown;

is sufficient, legal, and binding on and against all persons claiming from, through, or under the defendant.

(c) If a plaintiff serves a defendant by the defendant's surname only, the plaintiff or the plaintiff's attorney shall file an affidavit stating that the plaintiff does not know and has not, after diligent inquiry, been able to ascertain the first name of the defendant.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-17**

#### **Entry of orders and decrees in civil order book; quiet title record; index requirements**

Sec. 17. (a) The clerk of a court shall enter in the civil order book all orders and decrees in any suit to quiet the title to real estate. After a court enters final judgment in a proceeding, the clerk shall certify a copy of the final judgment and deliver the certified copy to the county recorder. The clerk shall include the costs of a transcript of the proceedings and the recording fees in the costs of the proceeding.

(b) A county recorder shall procure a substantially bound book that is the size and quality of the county deed records. The book shall be known as the "Quiet Title Record". The Quiet Title Record must contain a transcript of each proceeding and an index to each transcript. The index must contain the following:

- (1) An alphabetical list of plaintiffs.
- (2) The date of filing of the transcript.
- (3) The date of the final judgment.
- (4) The date on which the final judgment was recorded.
- (5) A brief description of the real estate that was the subject of the proceeding.
- (6) The book and page on which the final judgment is recorded.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-18**

#### **Presumption of death of nonresident; circumstances; intestate succession of title; vesting in nonresident's heirs**

Sec. 18. (a) A nonresident who, if alive, would be entitled to take and to own real estate in Indiana by descent or devise is presumed dead if the following conditions are met:

- (1) The nonresident has been absent from the nonresident's last place of residence in any other state or country for seven (7) years.
- (2) A spouse, parent, child, or sibling of the nonresident has not heard from the nonresident for seven (7) years.

(b) The real estate that a nonresident described in subsection (a) otherwise would have taken descends from the nonresident to the nonresident's heirs under IC 29.

(c) Title that passes under subsection (b) vests in a nonresident's heirs upon full compliance with the provisions of section 19 of this chapter.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-19**

#### **Procedure to claim title from nonresident presumed dead**

Sec. 19. (a) A person who claims real estate under section 18 of this



chapter may file a verified complaint in the circuit or superior court of the county in which the real estate is located. The complaint must:

- (1) name as a defendant the nonresident who is presumed dead under section 18 of this chapter;
- (2) particularly describe the real estate; and
- (3) contain a statement of the facts required by section 18 of this chapter.

(b) Notice of the pendency of the action, including the date on which the court shall hear the complaint filed under subsection (a), must be published in a daily or weekly newspaper of general circulation that is printed and published in the county seat of the county in which the real estate is located. If a newspaper does not exist, notice must be published in a newspaper that is printed and published in the county in which the real estate is located. Notice must also be published in a newspaper of general circulation that is printed and published in the county seat of the county in which the defendant last resided. If a newspaper is not printed and published in that county seat, then notice must be published in a newspaper that is printed and published in the county seat nearest to the county in which the defendant last resided.

(c) Prima facie proof of publication of notice as required by subsection (b) consists of:

- (1) affidavits of the publishers of the newspapers in which the notice was published; and
- (2) a printed copy of the published notice.

(d) The court shall hear the complaint filed under subsection (a) not earlier than sixty-five (65) days after notice was first published under subsection (b). If the court finds that:

- (1) the defendant received sufficient notice under subsection (b); and
- (2) the facts alleged in the complaint are true;

the court shall enter judgment quieting the title to the real estate in favor of the plaintiff.

(e) A judgment entered under subsection (d) becomes final and absolute three (3) years after the date it was entered unless, within those three (3) years, the defendant appears and moves to vacate the judgment.

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-20**

#### **Action to quiet title of real estate exempt from sale on execution**

Sec. 20. (a) A resident householder in Indiana who may claim real estate owned by the householder exempt from sale on execution may quiet the title to the real estate against any judgment or lien.

(b) The complaint in an action described in subsection (a) must state the following:

- (1) The ownership of the real estate.
- (2) The existence of a judgment against the real estate.
- (3) The right of the owner to claim the real estate exempt from sale on execution.

(c) In an action described in subsection (a), the title to the real estate

may be quieted against a judgment whether the householder has executed the judgment or has filed a schedule claiming an exemption from sale on execution if the court finds that the owner's interest, in value, of the real estate does not at the time of the hearing exceed any mortgages, tax, or assessment on the real estate by more than seven hundred dollars (\$700).

*As added by P.L.2-2002, SEC.15.*

### **IC 32-30-3-21**

#### **Valuation of exempt real estate; limitation**

Sec. 21. At the hearing under section 20 of this chapter, the court shall determine the value of the householder's interest in the real estate and shall set forth this amount in the decree quieting the title to the real estate. While the householder owns the real estate, the amount shall be charged against any other claim of exemption made by the householder to limit the householder's exemption in the real estate from sale on execution or other final process to the amount allowed by law.

*As added by P.L.2-2002, SEC.15.*